***United States Court of Appeals***

***for the***

***District of Columbia Circuit***


# TRANSCRIPT OF RECORD

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# Court of Appeals, District of Columbia

**APRIL TERM, 1909.**

**No. 1997.**

634

**No. 2, SPECIAL CALENDAR.**

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

*vs.*

JEREMIAH FICKLING.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

**FILED MARCH 18, 1909.**

# Court of Appeals, District of Columbia

**APRIL TERM, 1909.**

## No. 1997.

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**No. 2, SPECIAL CALENDAR.**

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DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

*vs.*

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IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 26, 1909.

# In the Court of Appeals of the District of Columbia.

No. 1997.

DISTRICT OF COLUMBIA, Plaintiff in Error,
*vs.*
JEREMIAH FICKLING.

a In the Police Court of the District of Columbia, January Term, 1909.

No. 331,946.

DISTRICT OF COLUMBIA
*vs.*
JEREMIAH FICKLING.

Information for Unlicensed Hack.

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (*Information.*)

In the Police Court of the District of Columbia, January Term, 1909.

DISTRICT OF COLUMBIA, *ss:*

James L. Pugh, Jr., Esq., Assistant Corporation Counsel, who, for the District of Columbia, prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Jeremiah Fickling, late of the District aforesaid, on the 17th day of January, in the year A. D. nineteen hundred and nine, in the City of Washington and in the District aforesaid, did engage in the business of proprietor of a certain horseless carriage for the conveyance of passengers, and did demand and accept pay for the service of said carriage without first having obtained a license so to do, and paying the license tax therefor, before engaging in said business; contrary to and in violation of an Act of Congress approved July 1, 1902, and constituting a law of the District of Columbia.

(Signed) J. L. PUGH, JR.,
*Assistant Corporation Counsel.*

Personally appeared G. H. Dawson this 19th day of January, A. D. 1909, and made oath before me that the facts set forth in the foregoing information are true.

(Signed) H. C. HOPKINS,
*Deputy Clerk Police Court of the District of Columbia.*

2 In the Police Court of the District of Columbia.

No. 331,946.

THE DISTRICT OF COLUMBIA
*vs.*
JEREMIAH FICKLING.

*Motion to Quash.*

Now comes the defendant by his attorneys and moves the Court to quash the Information herein on the ground that the Act of Congress in said Information set up does not apply to the facts and situation of this cause as established by the stipulation of counsel herein.

(Signed) J. S. FLANNERY,
(Signed) WILLIAM HITZ,
*Attorneys for Defendant.*

3 *Bill of Exceptions.*

In the Police Court of the District of Columbia.

No. 331,946.

DISTRICT OF COLUMBIA
*vs.*
JEREMIAH FICKLING.

Be it remembered that at the trial of this cause, which came on for a hearing on the twenty-fifth day of February, A. D. 1909, before the Honorable Ivory G. Kimball, one of the Judges of the Police Court of the District of Columbia, the following stipulation and agreement of facts by and between counsel for the respective parties was filed, to wit:

4 In the Police Court of the District of Columbia.

No. 331,946.

THE DISTRICT OF COLUMBIA
*vs.*
JEREMIAH FICKLING.

It is hereby stipulated and agreed by and between counsel for both parties to the above-entitled cause that the following facts shall be taken and considered as established in said cause for all purposes

of adjudication thereof; and as a part of the information. No objection is made to the form of said information, and on the same and said facts the defendant now moves to quash said information.

That the defendant, Jeremiah Fickling, at the time of the alleged offence laid in the information herein, was the General Manager of the Terminal Taxicab Company, a corporation doing business in the District of Columbia; That Fickling was arrested on the charge laid in the information herein, and that said Fickling, as the representative of said Terminal Taxicab Company, is liable in this prosecution if said prosecution is sustained by the Court;

That said Terminal Taxicab Company is a corporation duly incorporated and authorized by its charter to engage in the business of a livery stable or auto-livery garage in the City of Washington, and is also authorized by its charter to engage in the business of a public hackman in said city; subject always to the license-law of the District of Columbia as far as the same may apply to the operations of said Taxicab Company.

That said Terminal Taxicab Company has an agreement with the Washington Terminal Company, a corporation owning and operating the Union Station in the City of Washington, whereby the said Terminal Company allows to said Terminal Taxicab Company the exclusive use of a certain space in its grounds and buildings for the purpose of standing its vehicles to enable it to operate a cab service at said Station;

That in consideration of said exclusive use of said space in the grounds and buildings of said Washington Terminal Company, the said Terminal Taxicab Company agrees to maintain in said space at said station a sufficient number of vehicles and to operate therefrom an efficient motor-cab service by day and by night, to the satisfaction of said Washington Terminal Company, and at prices and fares not to exceed those prescribed by the regulations of the Commissioners of the District of Columbia;

That the space in the grounds and buildings of said Washington Terminal Company used by the Terminal Taxicab Company under said agreement is the property of said Washington Terminal Company, and no portion of the space so used and occupied is a part of any public street or way in said City of Washington;

That on the day laid in this information in this cause, namely the 18th day of January, 1909, the Terminal Taxicab Company was standing and maintaining its vehicles in said space and was operating a cab service at and from said Union Station under the above agreement with said Washington Terminal Company;

That said Terminal Taxicab Company was at the time legally licensed "as Proprietor of an Automobile Garage located at the rear of No. 1219 Thirteenth Street, Northwest," in the City of Washington;

That said garage licensed as aforesaid is removed from and has no connection with the grounds or buildings of said Washington Terminal Company; and said Terminal Taxicab Company at such time had, and at the present time has, no other or further livery or hackman's license in the District of Columbia; that said Taxicabs

are not licensed as public cabs or hacks; that on the day laid in the information herein a taxicab of the Terminal Taxicab Company standing in said space at the Union Station under the foregoing agreement was summoned by telephone message from the
6 office of said Taxicab Company in the Union Station; and was from the space occupied as aforesaid sent to a house on H street in the City of Washington, and carried a person from said house in H street to the N. E. corner of 14th street, N. W., on Pennsylvania Avenue in said city, for which service the driver of said taxicab then and there demanded and received a certain compensation in money, the said taxicab being the property of said Terminal Taxicab Company, and the driver thereof acting under the direction and authority of said Jeremiah Fickling, defendant in this cause.

(Signed) JAMES L. PUGH, Jr.,
*Ass't Corporation Counsel.*

(Signed) J. S. FLANNERY,
(Signed) WILLIAM HITZ,
*Attorneys for Jeremiah Fickling,*
*Defendant in the Above Entitled Cause.*

Thereupon the defendant, by his counsel, interposed a motion to quash the information in this case filed on the ground that the Act of Congress in said information set up does not apply to the facts and situation of this cause as established by said stipulation.

After hearing argument of counsel on said motion on the twenty-fifth day of February, 1909, the Court ruled as a matter of law that, as agreed in said stipulation of counsel, the space at the Union Station referred to therein is the property of the Washington Terminal Company used exclusively by the terminal Taxicab Company for the purpose of standing its vehicles to enable it to operate a cab service at said Station, it is not a public hackstand within the meaning and intent of the Act of Congress under which said information is filed, and sustained the motion to quash on said ground and ordered the discharge of the defendant.

Whereupon Counsel for the District of Columbia excepted to said ruling of the Court, which exception was duly noted by the
7 Court upon his minutes, and thereupon the District of Columbia, by its counsel, gave notice in open Court at the time of said ruling of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

The District of Columbia, by its counsel, therefore prays the Court to settle, sign and seal this its bill of exceptions, which is accordingly done now for then this first day of March, A. D. 1909.

(Signed) I. G. KIMBALL,
*Judge of the Police Court of the District of Columbia.*

8 *(Copy of Docket Entries.)*

In the Police Court of the District of Columbia.

No. 331,946.

DISTRICT OF COLUMBIA
*vs.*
JEREMIAH FICKLING.

Information for Unlicensed Hack.

Information filed Tuesday, January 19, 1909.
Continued to Jan. 26, Feb. 3, 16, 19, 25.
Feb. 25, 1909.—Stipulation of Counsel as to facts filed.
Motion to quash information filed, argued and sustained. Defendant discharged.
Exceptions taken to rulings of Court on matters of law at time of said rulings and notice given by Counsel for the District of Columbia in open Court of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.
March 1, 1909.—Bill of exceptions filed, settled, signed and sealed.
March 9, 1909.—Writ of error received from the Court of Appeals of the District of Columbia.

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, N. C. Harper, Deputy Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 331,946 wherein the District of Columbia is plaintiff and Jeremiah Fickling defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, — the City of Washington, in said District, this 18th day of March, A. D. 1909.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
*Deputy Clerk Police Court, Dist. of Columbia.*

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable I. G. Kimball, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, plaintiff, and Jeremiah Fickling, de-

fendant, a manifest error hath happened, to the great damage of said plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 9th day of March, in the year of our Lord one thousand nine hundred and nine.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Allowed by
SETH SHEPARD,
*Chief Justice of the Court of Appeals of the District of Columbia.*

[Endorsed:] Filed Mar. 9, 1909. F. A. Sebring, Clerk Police Court, D. C.

Endorsed on cover: Police court. No. 1997. District of Columbia, plaintiff in error, *vs.* Jeremiah Fickling. Court of Appeals, District of Columbia. Filed Mar. 18, 1909. Henry W. Hodges, clerk.

# Court of Appeals, District of Colu

## APRIL TERM, 1909.

## No. 1997.

## No. 2, SPECIAL CALENDAR.

DISTRICT OF COLUMBIA, PLAINTIFF IN ER

vs.

JEREMIAH FICKLING.

## BRIEF ON BEHALF OF PLAINTIFF IN ER

EDWARD H. THOMAS,

# Court of Appeals, District of Columbia.

**APRIL TERM, 1909.**

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## No. 1997.

**No. 2, SPECIAL CALENDAR.**

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DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

*v.*

JEREMIAH FICKLING.

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### STATEMENT OF FACTS.

Jeremiah Fickling was charged in the Police Court, as the proprietor of a certain horseless carriage, with demanding and accepting pay for the service of said carriage without having a license to do so and without paying the license tax therefor. The case was tried upon an agreed statement of facts and a motion to quash the information. The motion to quash was granted and the defendant discharged. Whereupon the defendant excepted to the ruling of the court and applied to this court for a writ of error, which was allowed.

The agreed statement shows, in brief, that Fickling is the general manager of the Terminal Taxicab Company;

that the company is chartered to engage in the business of a livery stable or auto-livery garage, *and also to engage in the business of public hackmen in this city* (R., p. 3); that the company has an agreement with the Terminal Company by which it is allowed the exclusive privilege of standing its cabs on certain space of the Terminal Company, and to operate therefrom a cab service *at prices not to exceed those fixed by the regulations of the District Commissioners;* that the cab company is duly licensed as the proprietor of an automobile garage, located at the rear of No. 1219 13th street northwest; that the cab company does not have a hackman's license, and that the taxicabs are not licensed as public cabs or hacks; that one of the cabs was summoned from the company's stand at the Union station, by telephone, and went from said stand to a house on H street and carried a person from that house to the corner of 14th street and Pennsylvania avenue northwest, for which service the driver of the said cab demanded and received a certain compensation, the said cab being the property of the said cab company and the driver thereof acting under direction and authority of the said Fickling.

## Assignment of Errors.

The Police Court erred—

1. In holding that the Terminal Taxicab Company was not required to procure a hackman's license for the business thus transacted by it.

2. In quashing the information and discharging the defendant on the facts stated and agreed upon.

3. In holding that the said cab company was not engaging in the business of a public hackman.

# ARGUMENT.

## I.

### Hacks and Hackmen.

The prosecution in this case is an attempt to learn if the cabs of the Terminal Taxicab Company are liable for a hack license under paragraph 11, section 7, of the act of July 1, 1902 (the Personal Tax Law) (32 Statutes, p. 624). The company has a livery license under paragraph 13 of this law, and claims that it is not liable for the license under paragraph 11. These two paragraphs are here set out.

"Par. 11. That proprietors or owners of hacks, coaches, omnibuses, carriages, wagons, and other passenger vehicles for hire shall pay license taxes as follows: Vehicles drawn by one animal, six dollars per annum; autovehicles, automobiles, electromobiles, or other horseless vehicles, by whatever name called, and vehicles drawn by more than one animal, nine dollars per annum. Licenses issued under this section shall date from July first in each year. The driver of every licensed passenger vehicle, while transacting business as such driver, shall wear conspicuously upon his breast a badge numbered to correspond with the license of his vehicle. The badge shall be furnished by the District of Columbia, and a tax of fifty cents shall be charged therefor in addition to the amount of the vehicle license."

* * * * * * *

"Par. 13. That proprietors or owners of establishments where autovehicles of any pattern, description, or motor power whatsoever are kept for hire or are kept or stored for others, for profit or gain, shall pay a license tax of twenty-five dollars per annum for ten vehicles or less and two dollars additional for each vehicle in addition to ten: *Provided,* That nothing in this paragraph shall be so construed as to exempt the owner of any vehicle using the public stands from paying the additional license tax provided in paragraph eleven of this section."

Taximeter cabs have been treated by the municipality as public vehicles, and stands on the streets have been assigned for them and schedules of rates provided. They are herewith set forth.

"Ordered:

"That section 2 of article IV of the Police Regulations of the District of Columbia designating stands for licensed hacks carrying passengers for hire is hereby amended by adding thereto the following stands, to be used only by mechanically propelled taximeter cabs or vehicles, and to be known as stands Nos. 35, 36, 37, 38, 39, 40, and 41, and to read as follows:

"Stand 35. On the west side of Scott Circle, next to street curb—two vehicles.

"Stand 36. On the plaza in front of the Union Station, immediately west of Delaware avenue and north of Massachusetts avenue, vehicles to be backed up to the curb of Delaware avenue—ten vehicles.

"Stand 37. On the angular space between Pennsylvania avenue and D street N. W., immediately east of 12th street—four vehicles.

"Stand 38. On the west side of 8th street N. W., immediately south of F street—three vehicles.

"Stand 39. On the west side of 15½ street N. W. (Madison Place), immediately north of Pennsylvania avenue—five vehicles.

"Stand 40. On the east side of 17th street N. W., north of Pennsylvania avenue N. W. and south of H street—five vehicles.

"Stand 41. On the south side of Pennsylvania avenue east of the Municipal Building and west of 13th street—three vehicles.

"Public hack stands numbered 2, 19, 21, and 29 are hereby abolished, so far as their occupancy by horse-drawn vehicles is concerned."

Officially published in the *Evening Star* March 17, 1908.

"Ordered:

"That section 1, of article V of the Police Regulations of the District of Columbia be, and the same is hereby, amended

by adding thereto the following schedule of charges for taximeter vehicles:

"TAXIMETER VEHICLES.

"TARIFF No. 1. For one or two persons: Thirty cents for the first half mile and ten cents for each quarter of a mile thereafter, with ten cents for each six minutes of waiting. Children, not exceeding two, under five years of age, accompanied by adults, shall be carried free. When one child, between five and twelve years of age, is accompanied by adult, it shall be carried free.

"TARIFF No. 2. For three, four, or five persons: Thirty cents for the first one-third of a mile and ten cents for each one-sixth of a mile thereafter, with ten cents for each four minutes of waiting. Children, not exceeding two, under five years of age, accompanied by adults, shall be carried free. When two children, between the ages of five and twelve years are accompanied by adults, they may be counted as one full fare. Children over twelve years of age are to pay full fare.

"TARIFF No. 3. For ordering a cab, each mile or fraction thereof from a point half a mile from stand or station to point ordered, twenty cents; within one-half mile limit no extra charge shall be made.

"All passengers shall be entitled to have conveyed, without charge, such baggage, luggage or small packages as can be conveniently carried within the vehicle. For each trunk, valise or bag carried outside the vehicle the charge may be twenty cents. Rate cards shall be posted in each vehicle informing passengers as to the method of computing their fare, the rate charges, and any privileges they may be entitled to. All provisions of existing law or regulations not inconsistent herewith are hereby made applicable to taximeter vehicles."

Officially published in the *Washington Times* May 8, 1908.

The business of conducting a livery stable, under which the defendant in error (by virtue of paragraph 12 of section 7 of the act of July 1, 1902) procured a license, was but one branch of its enterprise. The other chartered purpose

was to engage "in the business of public hackmen in this city," and in aid of that design it entered into the agreement with the Terminal Company to operate a cab service "at prices and fares not to exceed those prescribed by the regulations of the Commissioners of the District of Columbia" (R., 3). The latter business requires a license for each vehicle, under paragraph 11 of section 7 of the act of July 1, 1902.

The Terminal Company and this Terminal Taxicab Company, as its name implies, were both in fact engaged in a public-service business in relation to the traveling public.

On the part of the Terminal Company the work was public in reference to the use of that company's station and depot grounds, although it is allowed by law to establish reasonable rules consistent with the public interest in regard to its private property. Donovan *v.* Pennsylvania Company, 199 U. S., 293, 294, 295. On the part of the Terminal Taxicab Company (to quote from the Donovan case), "That arrangement is to be deemed, not unreasonably, a means devised for the convenience of passengers and of the railroad company."

Donovan *v.* Pennsylvania Company, 199 U. S., 297.

However, if under the arrangement mentioned the defendant is not, by the mere fact of entering into said arrangement and presumably living up to its agreement, it was clearly engaged in a public business and not in a private livery-stable business, when it made the engagement for which it has been prosecuted in this case.

The taxicab company, plainly, is conducting a public hack, or cab, business as a matter of fact, whether it be liable or not for the license fee prescribed in paragraph 11, section 7, of the personal tax law. The only difference between this cab company and the proprietors of other public hacks is that the former do not stand on the streets as do the

latter, but have the advantage of a stand in the Union Station, on the property of the Washington Terminal Company, thus affording these cabs superior facilities for the transaction of business over cabs on the outside of the station occupying stands on the street. Are they entitled also to the further advantage over their rivals on the street in that they are exempt from the tax imposed by paragraph 11? If so, upon what theory? The business carried on is exactly the same. It must be, then, because they do not occupy a public stand. But this is an occupation or business tax, to be determined by the character of the work performed.

McQuillan on Mun. Corp., 642, N.
N. Y. *v.* Reesing, 79 N. Y. Supp., 331.
21 Am. & Eng. Enc., 810, N., "Public Vehicles."
Huddy on Automobiles, §§ 3 & 5, *infra.*

"When, therefore, the legislature used the words 'hackney coach,' it must be deemed to have used it in such sense as to cover coaches for hire standing in the streets, as well as those kept in stables for hire."

Masterson *v.* Short, 3 How. Pr. (N. Y.), 481, 486.

And this must be true notwithstanding the use of the words "using the public stands," in paragraph 13 of the act. These words were used to describe public hacks, because at that time there were none that did not occupy stands on the streets, and there are none now, except this taxicab company.

It is to be seriously questioned, also, whether this stand in the station is not a "public stand" within the meaning of paragraph 13.

Munn *v.* Illinois, 94 U. S., 113.

"With the Fifth Amendment in force, Congress, in 1820, conferred power upon the city of Washington 'to regulate

* * * the rates of wharfage at private wharves * * * the sweeping of chimneys, and to fix the rates of fees therefor * * * and the weight and quality of bread' (3 Stat., 587, sec. 7); and, in 1848, 'to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers' (9 *Id.*, 224, sec. 2).

"From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the States from doing that which will operate as such deprivation.

"This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking then to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise *De Portibus Maris,* 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affects the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control" (Munn *v.* Illinois, 94 U. S., 125, 126).

* * * * * * *

"Common carriers exercise a sort of public office and have duties to perform in which the public is interested (New Jersey Nav. Co. *v.* Merchants' Bank, 6 How., 382). Their

business is, therefore, 'affected with a public interest,' within the meaning of the doctrine which Lord Hale has so forcibly stated" (*Id.*, p. 130).

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations, if they use it in the particular manner.

"It matters not in this case that the plaintiffs in error had built their warehouse and established their business before the regulations complained of were adopted. What they did was from the beginning subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on subject to this condition. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns. The same principle applies to them that does to the proprietor of a hackney carriage, and as to him it has never been supposed that he was exempt from regulating statutes or ordinances because he had purchased his horses and carriage and established his business before the statute or the ordinance was adopted" (*Id.*, 133). * * *

"After what has already been said, it is unnecessary to refer at length to the effect of the other provision of the Fourteenth Amendment which is relied upon, viz., that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' Certainly it cannot be claimed that this prevents the State from regulating the fares of hackmen or the charges of draymen in Chicago, unless it does the same thing in every other place within its jurisdiction. But, as has been seen, the power to regulate the business of

warehouses depends upon the same principle as the power to regulate hackmen and draymen, and what cannot be done in the one case in this particular cannot be done in the other" (*Id.*, 135).

"The question of any failure of the company to properly care for the convenience of passengers was not one that, in any legal aspect, concerned the defendants as licensed hackmen and cabmen. It was not for them to vindicate the rights of passengers. They only sought to use the property of the railroad company to make profit in the prosecution of their particular business. A hackman, in nowise connected with the railroad company, cannot of right and against the objections of the company, go upon its grounds or in its station or cars for the purpose simply of soliciting the custom of passengers; but, of course, a passenger upon arriving at the station, in whatever vehicle, is entitled to have such facilities for his entering the company's depot as may be necessary" (Donovan *v.* Penn. R. R. Co., 199 U. S., at p. 295).

A railway company cannot suspend the operation of a city ordinance—*e. g.*, the forbidding of "soliciting" in a station.

Chillicothe *v.* Brown, 38 Mo. App., 609, 617.

*A fortiori,* it would seem, a railroad could not avoid an act of Congress by an agreement with a cab company, which it had the right to make (see Donovan *v.* Penn. Co., 199 U. S., 279), which act imposes a tax for which the cab company would be clearly liable but for the agreement, because, if the agreement did not exist, the cab company would be forced to occupy a stand upon the streets, and would then, without question, be subject to the tax.

The use of the highways by the cab company would be a sufficient reason for the tax.

Freund on Police Power, §§173, 377.
McQuillan, Mun. Corp., 642, N.
Johnson *v.* Macon, 114 Ga., 426.

The occupation of a stand on the streets is not essential. Nor is it important that the cab company pays another tax for its garage.

21 Am. & Eng. Enc., 814.
Lasley *v.* D. C., 14 App. D. C., 407.
St. Louis *v.* Weitzel, 130 Mo., 600.
Howland *v.* Chicago, 108 Ill., 496.

If these are not public cabs, then the schedule of rates fixed for them by the Commissioners of the District is void, and the company may charge the public whatever it pleases, since the cabs are private conveyances, and the rates charged would then become merely a matter of private contract, with which the municipality would have no right to interfere.

So, also, the provisions of section 7, article IV, that, "It shall be unlawful for any person to solicit patronage for public hacks on the public streets or grounds, but the fact that such public hack or cab displays a device to indicate that such cab or hack is not engaged shall not of itself be considered as soliciting patronage," would become ineffective as to them, and we would have the intolerable nuisance of "solicitations" on the part of these people, who are, as before remarked, public hackmen as a matter of fact, whether or not they be such under the law.

Under the decision in Case *v.* Storey, L. R., 4 Ex., 319, also, these cabs are not public, and they might refuse to carry any person who applies. Clearly, they might refuse to carry one not a passenger on the railway.

"§ 1. The marked increase in the use of taxicabs and public automobiles calls attention to the legal relations between the owners and operators of these vehicles and their patrons or the public; also the rights and liabilities of persons and companies furnishing to the public transportation by means of motor driven carriages. We had hacks and cabs long before the automobile appeared on the public highways, and inasmuch as the mechanical power is merely a substitute

for the animal, it might be said that there is really nothing new to be stated concerning the law governing those who operate and use such public conveyances; however, there is much existing statutory and common law to be applied, and it is the application of established rules of law that is of interest when considering the various uses of the motor vehicle.

"§ 2. *Historical.*—A taxicab is a hackney carriage. The system of hackney coaches, standing at a designated place in the streets of a city, grew out of the necessity of meeting the public demand for means of transit from point to point. This gave rise to a class of men who procured one or more vehicles, according to their means, and plied the streets for hire. It was soon found necessary to place these men under special police regulations, and to assign certain places in the streets where they might stand waiting for customers. Such regulations were necessary for the control of hackmen and for the convenience of the public. Their object was to prevent the hackmen from traveling with empty vehicles, in search of customers, in the streets, otherwise sufficiently crowded, and also to prevent their stopping and remaining for any considerable time at inconvenient places; but the great object was to have hacks standing at various points where the public would be most likely to want them, and where they would cause the least inconvenience to other vehicles or injury to the surrounding property" (citing Masterson *v.* Short, 30 Sup. Ct. (N. Y.), 241, 245).

"§ 3. *Definitions.*—The term 'public automobile,' as used herein, and as construed in law, means an automobile that is engaged in the service of the public as a common carrier; not one that is used by the government in some one of its branches or departments, but a motor vehicle which carries the public for hire, like any other common carrier. The term includes taxicabs, automobile, bus or stage lines, and sight-seeing automobiles. Besides these, there are a number of automobile lines that make a business of transporting freight between points in the United States. We will endeavor to cover the entire field from a legal standpoint, but our discussion will refer principally to the 'taxicab.'

"§ 4. *No Exclusive Right to Use the Word 'Taxicab.'*—Let it be said at the outset that there can be no exclusive proprietary right in the use of the word 'taxicab,' no matter

who coined the word, as has been claimed. The word 'taxicab' is public property; it is descriptive of a chattel and is the commonly used name by which automobile hacks possessing fare-registering machines are known to the public. Any person or corporation, conducting a hacking business and using taximeters on them, possesses the right to call the vehicles 'taxicabs,' and advertise the service as conducted by the use of 'taxicabs.' The fact that the word has been registered as a trade-mark does not alter the case. With as much reason could a manufacturer of automobile trucks call his vehicles 'auto-trucks,' and claim exclusive rights to the use of the abbreviated word.

"§ 5. *The Taxicab is a Hackney Coach.*—A taxicab, as said before, constitutes a hackney coach. (See Gassenheimer *v.* District of Columbia, 26 App. Cas., 557.) A hackney coach is a term long used in England, meaning a public carriage for hire which stands in the streets, and also those kept for hire in stables. The test in determining the character of the particular vehicle engaged in transportation is whether the carriage is held out for the general accommodation of the public.

"Under section 316 of the city of New York it is provided that a vehicle kept for hire shall be deemed a public hack, and a vehicle intended to seat two persons inside shall be deemed a cab, and a vehicle deemed to seat four persons shall be deemed a coach; and the term 'hackman' shall be deemed to include the owner or driver or both. This ordinance was approved November 2, 1905, before the present taxicabs came into use in the city of New York. It has been assumed that the local ordinance covers taxicabs and other automobiles engaged in carrying the public, because the definition of a public hack includes any vehicles kept for hire."

* * * * * * *

"3. *Hackney Carriages and Public Conveyances.*—In England it has been held that an ordinary omnibus running along a fixed route is a hackney carriage, within the meaning of statutes and ordinances. (See Hickman *v.* Birch, 24 Q. B. D., 172.) But a hackney coach is not a wagon, according to decisions in California and Nevada. (See Quigley *v.* Gorham, 5 Cal., 518; 63 Am. Dec., 139;

Edgecomb *v.* His Creditors, 19 Nav., 154.) It has also been held in the State of New York that a hotel omnibus conveying guests to and from a station free of charge is not a 'public conveyance.' (See City of Oswego *v.* Collins, 38 Hun. (N. Y.), 17.) In Allen *v.* Tunbridge, L. R., 6 C. P., 481, it was held that a brougham the owner of which, by agreement with a railway company, attended the company's station for the conveyance of passengers, was a hackney carriage.

"In the class of common carriers of passengers are included not only railroads, horse, dummy, electric and cable street railways, and steamboat companies, but proprietors of stage coaches, city omnibus lines, hackmen and ferrymen, including the proprietors of taxicabs and other motor vehicles engaged in public transportation. (See also 5 Am. & Eng. Encyc. of Law (2d ed.), 184.) The taxicab is a common carrier, and because it is a common carrier there are important rights and liabilities connected with its operation."

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"§ 7. *Municipal Regulations.*—Since a taxicab is a hackney coach or a vehicle held out for public hire, it is subject to municipal control, compelling the owners or drivers to become licensed to engage in the business which they are carrying on. Under the ordinances of the city of New York, taxicabs and other vehicles engaged in a similar employment must be licensed by the owner."

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"Municipal corporations may, generally speaking, require those engaged in the hacking business to become licensed, and the courts have even gone so far as to hold that if hackmen are without licenses, no recovery can be had for services rendered.

"§ 12. *Legal Rates of Fare.*—The rates of fare charged by taxicab proprietors cannot be above the legal rates established by the municipal ordinances, at least not unless the passenger expressly contracts to pay more for the service requested. Under no circumstances can a common carrier charge an unreasonable fare, and there can be no discrimination in the rates charged with reference to persons. The 'legal rates' prescribed by law mean that a passenger is not compelled to pay over those rates against his consent. These

rates are established for the protection of the public and to prevent abuse."

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"§ 14. *Operation of Vehicles.*—Taxicab drivers are required to exercise greater care than the chauffeurs of private automobiles, because they are engaged in a public service, and not only are they required to protect persons on the highway generally, but passengers are entitled to protection by the exercise of care and caution on the part of the taxicab chauffeurs. For negligence of the drivers the proprietors of taxicabs are liable, and so are the drivers liable personally to persons negligently injured. All the automobile regulations in regard to stopping upon frightening horses and when accidents happen must be obeyed by drivers."

Huddy on Automobiles (2d ed.), pp. 269 *et seq.*

In the case of New York *v.* Reesing, 79 N. Y. Supp., 331, it was held that under the New York ordinances, which provided for a license fee of $25 on public hacks standing in the streets, and a special rate of $3 for "special hacks" standing in front of stables or private premises with the owner's consent, under a special permit, a hack standing in front of the Imperial Hotel, with the consent of the hotel, but without the special permit, was liable for the license fee of $25.

There are two English cases, decided in 1871, which hold that carriages going upon the property of a railway company, for the use of the passengers of the railway, are hackney carriages within the Statutes of 20 and 21 Victoria, c. 43.

Clarke *v.* Stanford, 6 Q. B., 357.

Allen *v.* Tunbridge, L. R., 6 C. P., 481.

In the latter case the hack went upon property of the company, "to which the general public have no right of access except when arriving or departing as passengers by the railway."

Willes, J., said:

"A cab does not become other than a hackney carriage though plying for hire in a railway station."

These cases discuss the meaning of the phrase "plying for hire."

Case *v.* Storey, L. R., 4 Ex., 319, was an earlier case (1869), and decided that a cab on the premises of a railway company is not standing or plying for hire in a "public street or road," and the driver cannot be compelled to convey any person desirous of hiring it.

## II.

### Construction of the Act.

This is an act to raise revenue. Section 6 provides:

"That in order to provide revenue to meet the appropriations made by this act and appropriations to be hereafter made to provide for the expenses of the government of the District of Columbia, it is further enacted," etc.

The Supreme Court of the United States has decided in a series of decisions, beginning with United States *v.* Hodson, 10 Wall., 395, 406, that revenue statutes are to be liberally construed.

"Revenue statutes are not to be regarded as penal and therefore to be construed strictly. They are remedial in their character, and to be construed liberally, to carry out the purposes of their enactment."

U. S. *v.* Hodson, 10 Wall., 406.

"By the now settled doctrine of this court (notwithstanding the opposing dictum of Mr. Justice McLean in United States *v.* Sugar, 7 Pet., 453, 462, 463), statutes to prevent frauds upon the revenues are considered as enacted for the public good and to suppress a public wrong, and therefore, although they impose penalties or forfeitures, not to be construed, like penal laws generally, strictly in favor of the de-

fendant; but they are to be fairly and reasonably construed" (U. S. *v.* Stowell, 133 U. S., 12).

Taylor *v.* U. S., 3 How., 197, 210.
Cliquot's Champagne, 3 Wall., 114, 115.
U. S. *v.* Hodson, 154 U. S., 580.
Smythe *v.* Fiske, 23 Wall., 374, 380.

Followed in—

United States *v.* Mynderse, 154 U. S., 581.
United States *v.* Hodson, 154 U. S., 580.

A remedial statute ought not to be so construed as to defeat the very purpose of its enactment.

Beley *v.* Naphtaly, 169 U. S., 361.

In Lauer *v.* District of Columbia, this court, in speaking of the act to regulate the sale of intoxicating liquors, said:

"The statute was enacted with the double purpose of increasing the revenues of the District and providing a remedy for many of the evils that experience had shown to attend the unrestrained traffic in liquors, at retail, to be drunk upon the premises where sold. Notwithstanding the penal clauses, without which it would be a dead letter, the act is to be regarded as a general revenue and remedial statute and given a liberal and, at the same time, reasonable construction, in aid of the remedy, rather than a strict and narrow one, in the interest only of those who violate or evade its provisions" (Lauer *v.* D. C., 11 App. D. C., 457).

"And manifestly the word 'car' was used in its generic sense. There is nothing to indicate any particular kind of car was meant. Tested by context, subject-matter, and object, 'any car' meant all kinds of cars running on rails, including locomotives. And this view is supported by dictionary definitions and by many judicial decisions, some of them having been rendered in construction of this act.

"Moreover, it is settled that 'though penal laws are to be strictly construed, yet the intention of the legislature must govern in the construction of penal as well as other statutes; and they are not to be construed so strictly as to defeat the obvious intention of the legislature' (United States *v.*

Lacher, 134 U. S., 624). In that case we cited and quoted from United States *v.* Winn, 3 Sumn., 209, in which Mr. Justice Story, referring to the rule that penal statutes are to be strictly construed, said:

" 'I agree to that rule in its true and sober sense; and that is, that penal statutes are not to be enlarged by implication, or extended to cases not obviously within their words and purport. But where the words are general, and include various classes of persons, I know of no authority which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute which has various known significations, I know of no rule that requires the court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word. In short, it appears to me that the proper course in all these cases is to search out and follow the true intent of the legislature, and to adopt that sense of the words which best harmonizes with the context, and promotes in the fullest manner the apparent policy and objects of the legislature.' "

Johnson *v.* Southern Pacific, 196 U. S., 1, 17, 18.

It is submitted that the automobiles of the Terminal Taxicab Company are public hacks, as shown by the facts in this case, and that they are liable for the license tax prescribed in paragraph 11 of the Personal Tax Law.

Respectfully submitted,

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